

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: CONGARD=2

In re Application of:)	Art Unit: 1762
)	
Jean C. CONGARD et al)	Examiner: PIANALTO, B.
)	
Appln. No.: 09/982,141)	Washington, D.C.
)	
Filed: October 19, 2001)	Confirmation No. 7548
)	
For: DEVICE AND METHOD FOR)	March 5, 2004
SUPPLYING ATOMIZERS...)	

PETITION UNDER 37 CFR § 1.144

Honorable Commissioner for Patents
2011 South Clark Place
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

Petition is hereby made for withdrawal of the restriction requirement that was made on August 6, 2003, was traversed on September 8, 2003, and was made final on October 16, 2003.

Restriction was required between device claims 1-6 and 12 and method claims 7-11. Method claims 7-11 were selected, with traverse, and have now been allowed.

Reconsideration and withdrawal of the requirement are respectfully requested because the inventions are not distinct, and the explanations presented in support of the restriction requirement do not properly establish distinctness between the claimed inventions.

The restriction requirement was initially based on the Examiner's view that "the device could be used for

spraying solvent or water based paint compositions." Both the device claims and the method claims refer only to coating products, and this language clearly encompasses any type of paint compositions, whether solvent or water based. In this connection, attention is directed to the disclosure at page 14, lines 3-6, of the present specification, which clearly establishes that both the device and the method according to the invention are intended for spraying the same types of coating products.

In response to applicant's traverse of the requirement, the Examiner asserted, in the Office action of October 16, 2003, that the apparatus could be used to supply cleaning products.

Restriction requirements must be based on the invention as claimed. Method claim 7 is directed to a method for supplying coating products and device claim 1 is directed to a device for supplying coating products. Thus, the claimed device is for supplying precisely the same products as the claimed method. Whether or not the device of claims 1-6 and 12 could be used for supplying cleaning products, the fact remains that these claims are expressly limited to a device for supplying coating products.

Furthermore, it is clear that operation of the device of claim 1 would involve the method of claim 7 and, conversely, practice of the method defined in claim 7 would require the device of claim 1. Therefore, if this restriction requirement were proper, it would mean that one patent could never contain both device and method claims, and this is clearly not the rule.

Adherence to the restriction requirement will mean that applicant will have the possibility of obtaining two separately assignable patents. If each patent were assigned to a different company, then a potential infringer could be harassed by the two different assignees. In the scenario described above, if the restriction requirement is maintained, this is precisely the situation that could occur. In fact, the main reason why a terminal disclaimer must include a provision that both patents will remain commonly owned is to avoid such a situation.

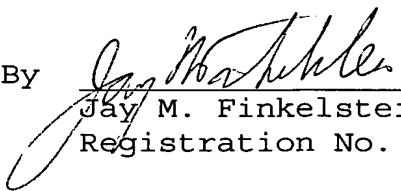
In order to advance matters, a new claim 13 that is clearly a linking claim, as explained in MPEP 806.05(d), was added in the amendment of January 15, 2004. This claim has also been withdrawn, but it is submitted that claim 13, being a clear linking claim, must be examined with the elected invention.

Accordingly, it is requested that the restriction requirement be reconsidered and withdrawn and that all of the application claims be examined on the merits.

Respectfully submitted,

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